

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
August 23, 2012

Meeting called to order at 6:08 p.m.

Board Members Present: Thomas Emerson, David Kelly, Deborah Driscoll, Ann Grinnell, Susan Tuveson, Robert Melanson

Members absent: Rich Balano

Staff: Gerry Mylroie, AICP, Town Planner

Pledge to the Flag

**Minutes: August 9, 2012**

**Mr. Melanson moved** to accept the minutes of August 9, 2012 as amended

**Mr. Kelly seconded**

**Motion carried 5 in favor; 1 abstention (Tuveson)**

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

There was no public comment.

**ITEM 1 – Beatrice Way Subdivision –Approved Subdivision Time Extension Request**

Action: Schedule a Site Walk - Operation Blessing Limited Partnership, requests a second time extension for one year to complete the construction of a previously approved 3-lot subdivision of ±3.2 acres located between Highpointe Circle and Kittree Lane. Tax Map 61 Lot 08, Residential - Rural (R-RL) Zone.

**Mr. Emerson** requested a timeline on this project be prepared for Board review, including time limits since the 2008 approval. A site walk was scheduled for Tuesday, September 11 at 5:00 p.m. Board members may meet at 7 Highpointe Circle.

**ITEM 2 – James and Jodie Nielsen, Right-of-Way Plan.** Action: Review Final Plan Submittal and Wetland Alteration Application, grant or deny approval. James and Jodie Nielsen, owner and applicant, requests approval to create a Class I Private Street located off Picott Road, Tax Map 60, Lot 2, Residential-Rural Zone. Agent is Bill Anderson, P.E., Anderson Livingston Engineers.

**Mr. Mylroie** noted waiver requests and stormwater drainage comments from CMA were provided at the meeting. **Earldean Wells**, Conservation Commission, noted the full wetland area is not delineated on the plan; the pond to the east identified as a detention pond is not included on the plan; the proposed culvert is not located on the plan. Because this information was provided by the applicant to the Board after the deadline and was not received in the Board's packet for timely review, this item was tabled.

**Ms. Tuveson moved** to continue this item to the next Planning Board meeting

**Mr. Kelly seconded**

**Motion carries unanimously by all members present**

**ITEM 3 – 50 State Road - Mixed Use Building Redevelopment –Site/Subdivision Plan.** Action: Review Final Plan Submittal and grant or deny approval. Jeff Apsey, owner and applicant, requests approval to redevelop the existing building and associated parking located at 50 State Road, Business-Local-1 Zone, Tax Map 3, Lot 2.

**Mr. Mylroie** noted staff prepared sketch plans to allow for increased parking in the rear and the elimination of some parking in the front of the property.

**Jeff Apsey** summarized changes made to the plan following CMA comments including State Road landscaping; ADA parking compliance; revised stormwater report; site traffic management; and miscellaneous corrections. He further explained the location of the detention pond allows for the required parking as designed without costly blasting of ledge. Additional landscaping has been included to the northerly side of the rear parking. Mr. Apsey argued the staff's opinion that the front parking space is in the front yard of the structure is incorrect as the parking space proposed aligns with the front of the existing structure, so it lies to the side of the structure, not in the front. CMA comments regarding lighting were addressed, and the applicant will comply with ordinance requirements regarding height of lighting mounts. **Mr. Kelly** noted a plan note allows for a change in fixture design, and this should be removed. **Mr. Emerson** asked about the entrance design. Mr. Apsey stated the walkway from State Road will include a stamped design. Discussion followed regarding the entrance design, sidewalk location, and landscaping. **Ms. Driscoll** asked about runoff onto State Road. Mr. Apsey stated the runoff will run to an existing drain on State Road, but there is no increase in runoff. **Mr. Mylroie** stated the parcel could be more pedestrian friendly, providing a walk in front of the parking instead of behind the proposed parking, and suggested tree cutting could be limited in the rear by designing perpendicular parking. **Earldean Wells** asked about snow storage location in the front. Mr. Apsey stated snow would have to be moved to the right of the site or removed in this area. Discussion followed regarding the location of the sidewalk. **Mr. Emerson** suggested adding a granite separator between the sidewalk and driveway entrance, at a minimum of 12" wide, replacing the proposed painted strip.

**Mr. Kelly moved** to read the Findings of Fact for vote

**Ms. Grinnell seconded**

**Motion carries unanimously by all members present**

WHEREAS: Jeff Apsey, applicant and owner of 50 State Road, proposed to redevelop an existing mixed-use building consisting of three apartments (formerly 2) and vie art studio/commercial/retail spaces (formerly one), and construct associated parking and stormwater structures. The property is located in the Business Local-1 zone (BL-1), Map 3, Lot 2. Applicant's engineer is Joseph Cheever, EIT, Attar Engineering, Inc.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan"), prepared by Attar Engineering, Inc. (or as noted):

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

#### FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:
--

[Mr. Kelly noted only the criteria will be read into the minutes with acceptance of the supporting documentation found in the Findings of Fact by reference.]

<b>A. Development Conforms to Local Ordinances.</b> <i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i>	
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>B. Freshwater Wetlands Identified.</b> <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>	
The Board finds this standard is not applicable. Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>C. River, Stream or Brook Identified.</b> <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>	
The Board finds this standard is not applicable. Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>D. Water Supply Sufficient.</b> <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>	
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>E. Municipal Water Supply Available.</b> <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>	
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>F. Sewage Disposal Adequate.</b> <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>	
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>G. Municipal Solid Waste Disposal Available.</b> <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>	
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>H. Water Body Quality and Shoreline Protected.</b> <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>	
The Board finds this standard is not applicable. Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	
<b>I. Groundwater Protected.</b> <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>	
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining	

**J. Flood Areas Identified and Development Conditioned.**

*All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.*

Vote of 6 in favor 0 against 0 abstaining

**K. Stormwater Managed.**

*Stormwater Managed. The proposed development will provide for adequate stormwater management*

Vote of 6 in favor 0 against 0 abstaining

**L. Erosion Controlled.**

*The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.*

Vote of 6 in favor 0 against 0 abstaining

**M. Traffic Managed.**

*The proposed development will:*

- 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
- 2. Provide adequate traffic circulation, both on-site and off-site.*

Vote of 6 in favor 0 against 0 abstaining

**N. Water and Air Pollution Minimized.**

*The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:*

- 1. Elevation of the land above sea level and its relation to the floodplains;*
- 2. Nature of soils and sub-soils and their ability to adequately support waste disposal;*
- 3. Slope of the land and its effect on effluents;*
- 4. Availability of streams for disposal of effluents;*
- 5. Applicable state and local health and water resource rules and regulations; and*
- 6. Safe transportation, disposal and storage of hazardous materials.*

- 1. The development is located outside of FEMA designated floodplains.*
- 2. This standard is not applicable to this development.*
- 3. A Stormwater Management Plan has been designed to meet stormwater run-off demands, including a stormwater detention pond at the rear of the site in the large parking area. CMA Engineers certify the plan is adequately designed. Run-off at the front of the property will flow into existing storm drains and landscaped areas, and there is no anticipated increase in run-off from this area.*
- 4. This standard is not applicable to this development.*
- 5. This standard is not applicable to this development.*
- 6. This standard is not applicable to this development.*

Vote of 6 in favor 0 against 0 abstaining

**O. Aesthetic, Cultural and Natural Values Protected.**

*The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.*

Appears to meet the standard. The property has not been identified as part of any significant aesthetic, cultural or natural habitats that require protection. The existing wooded area at the rear of the building was previously cleared to make way for the gravel area that exists today. The remaining trees are visible from State Road and a majority of them will be removed as part of the proposed site work associated with the rear parking and stormwater detention pond.

Vote of 6 in favor 0 against 0 abstaining

**P. Developer Financially and Technically Capable.**

*Developer is financially and technically capable to meet the standards of this section.*

The Applicant appears to meet this standard.

Vote of 6 in favor 0 against 0 abstaining

**NOW THEREFORE** the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby moves to grant Final Approval for the Development at the above referenced property, with waivers granted as noted and any conditions per Title 16.10.8.2.

Vote of 6 in favor 0 against 0 abstaining

Waivers: (All waivers must be included on the final plan prior to signature by the Planning Board Chairman)  
None

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires that any plans receiving waivers or variances be recorded at the York County Registry of Deeds within 90 days of the final approval. All subdivision plans must be recorded.
3. Applicant shall substitute a minimum 12-inch wide granite separator in lieu of a painted strip at the property entrance. This must be corrected on Sheet 1.
4. Lighting fixtures identified as S3 and S4 shall not exceed a MH of 15 feet and 20 feet respectively, per Title 16.8.2.4.2. This must be corrected on the Photometric Plan.
5. Light Detail (Sheet 3) notes 1 and 4, re: *Fixtures may be substituted at owner's discretion* shall be removed.
6. Prior to any earth moving or soil disturbance, one (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department.

**ACCORDINGLY, THE PLANNING BOARD HEREBY MOVES TO:**

1. Approve the Findings of Fact and acknowledge their reading and record their approval;

2. Approve the plan with any waivers and/or conditions as noted; and
3. Approve the Final Plan, and authorize the Planning Board Chairman to sign the Final Plan and Findings of Fact.

APPROVED BY THE KITTERY PLANNING BOARD ON August 23, 2012

Vote of 6 in favor 0 against 0 abstaining

Notice to Applicant:

Per Town Code Section 16.6.2      Appeal of Planning Board, Board of Appeals, or Port Authority Decision.

A. An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, and any Conditions of Approval.

**ITEM 4 – Yankee Commons Expansion – Subdivision Plan Review.** Action: Review Preliminary Plan for completeness and schedule a Site Walk and Public Hearing. Stephen A. Hynes, Trustee, owner, proposes to expand the adjacent Yankee Commons Mobile Home Park to create 83 sites on 58.1 acres. Property is located off Idlewood Lane/U.S. Route 1, Map 66 Lots 24 and 25, Mixed Use (MU) Zone. Agent is Tom Harmon, PE, Civil Consultants.

**Jay Stevens**, Civil Consultants, explained the only substantive change to the proposal is the roadway entrance design entering at Idlewood Lane instead of Route 1. Some previously proposed sites were removed, reducing the number from 83 to 79 sites; a front parcel was removed from the plan, reducing the proposal from 58.1 to 50 acres; and a community center has been included. He noted there are waiver requests for plan scale and YCSWCD review of storm drainage and erosion control, as these designs will be reviewed by the DEP and CMA peer review. **Ms. Tuveson** asked about a previous waiver request regarding dumpsters. **Mr. Beers** noted this will be addressed during preliminary review. **Ms. Driscoll** noted the minimum plan requirement checklist appears incomplete. **Mr. Emerson** noted these areas will be identified during review. **Earledean Wells** noted the numbering of proposed mobile home sites appears to be mis-numbered on the plan. **Mr. Stevens** explained the community center was counted as a unit, though not numbered, as it counts toward the sewer impact figures. **Ms. Driscoll** noted the community center does not appear to have parking calculations figured into the total required parking on the site. **Ms. Tuveson** asked if there had been any further grading on the site. **Mr. Beers** stated there had not.

**Mr. Kelly moved** to find the application substantially complete and schedule a site walk and public hearing.

**Mr. Melanson seconded**

**Motion carries unanimously by all members present**

A site walk was scheduled for Tuesday, September 4 at 5:00 p.m. Board members should meet at the start of Idlewood Lane, off Route 1. The item will be scheduled for a public hearing and preliminary plan review at the September 13, 2012 Planning Board meeting.

**Mr. Emerson** requested the number of units be confirmed and the proposed plan phasing be discussed.

**ITEM 5 – Contract Zoning Proposal – Amendment to Town Code.** Action: Discussion of the merits and limitations of amending the Town Code to include Contract Zoning and procedure. Schedule a workshop to discuss proposal.

The Planning Board has held one workshop with Council regarding Contract Zoning. **Ms. Grinnell** noted the Comprehensive Plan Update Committee agreed not to include Contract Zoning in the new update. **Mr. Melanson** noted the Economic Development Committee is in support of a contract zone amendment, so a dialogue is needed. **Ms. Driscoll** suggested a discussion as to the merits of contract zoning itself should be held, without reference to the existing contract zone document. **Ms. Grinnell** stated those parcels identified for contract zoning could be reviewed under existing ordinances without the need of contract zoning. **Mr. Kelly** summarized the discussion should be not on the details of contract zoning, but as to whether there is a need in Kittery. **Mr. Melanson** concurred, noting it was a Council directive to discuss this.

A workshop to discuss the merits of Contract Zoning was scheduled for Saturday, October 20, 2012 at 9:00 a.m. in Council Chambers, with Dave Kelly as Moderator. The Economic Development Committee, Comprehensive Plan Update Committee and others will be invited to attend the workshop.

**ITEM 6 –Town Planner Items:**

A. Frisbee Holding LLC, Conditions of Approval, Update.

Photos of fencing and signage were viewed. Board members noted the gate on the fence is not latched, however it was agreed the fence condition imposed was not specific and the applicant has apparently met the conditions of approval.

B. York Hospital, Notice of Violation and Action, Time Line and Update

Board discussed the original plan noting a wetland area that has since been identified as not being a wetland. **Ms. Grinnell** noted the project was not built to plan and now there is no approved plan for the project. **Mr. Emerson** requested the scheduled site walk of 9/13/12 will be held though the violation has been lifted, and the most recent changes and revisions be brought before the Board.

Board members discussed the proposed Title 16 amendments relative to field changes scheduled for Council review on September 10, 2012. It was decided to allow the approved changes go forward at this time, and further review the field change section at the September 27, 2012 Planning Board meeting (and specifically to include the depiction of a wetland on an approved plan). In the meantime, prohibition of field changes could be included in conditions of approval.

- Board members asked about the work underway around Kittery Town Hall. **Mr. Mylroie** explained the work is being done by the Department of Public Works as part of the proposed Thresher Memorial plans and stormwater runoff improvements. **Ms. Grinnell** asked that plans for the project be shared with the Board.
- **Mr. Emerson** read a letter (attached) from the Thresher Memorial Project Group requesting inclusion on the September 13, 2012 Planning Board agenda. Due to the anticipated items on the that agenda, the Board requested the Thresher Memorial presentation, followed by a Public Works presentation on current work, be scheduled for the September 27, 2012 agenda as new business.

**Mr. Melanson moved** to adjourn

**Ms. Kelly seconded**

**Motion carries unanimously by all members present**

The Kittery Planning Board meeting of August 23, 2012 adjourned at 9:00 p.m.  
Submitted by Jan Fisk, Recorder – August 27, 2012

ATTACHMENT



*USS Thresher Memorial*

Thresher Memorial Project Group  
P.O. Box 321  
Kittery, ME 03904

Telephone: 207-712-6333  
E-mail: [tmppg2013@gmail.com](mailto:tmppg2013@gmail.com)  
Web: <http://threshermemorialkittery.sharepoint.com>

Under the auspices of:  
Kittery Maine Improvement Foundation

*USS Thresher Memorial  
Project Group*

*Honorary Group Members*

John Riemenschneider  
Cresmember  
Tim Noonis  
Thresher Family

*Thresher Base SubVets*  
Kevin Galeaz

*Town Council Liaison*  
Ttd

*Documentary Producer*  
Beth Carroll

*Kittery Group Members*

D. Allan Kerr  
Capt William McDonough  
John Carson  
Kenneth Lemont  
Keith Lemont  
Norm Leon  
David Kelly  
Jeffery Pelkey  
Robert T. Markel  
Gerald R. Myhre

*50<sup>th</sup> Memorial Dedication — Memorial Circle, Kittery Maine  
April 07, 2013*

August 15, 2012

Mr. Tom Emerson  
Chairman, Kittery Planning Board  
200 Rogers Road  
Kittery, ME 09304

re: Thresher Memorial Project

Dear Chairman Emerson,

The Thresher Memorial Project Group respectfully requests to be placed on the Kittery Planning Board agenda for its Regular meeting on Thursday, September 13<sup>th</sup>, 2012, at the earliest point consistent with policy, to present a less-than-ten-minute project overview slideshow to update Planning Board on Project plans and proposals.

Advance materials would be provided for inclusion in the your meeting packet.

This presentation would also accord the opportunity to promote community awareness of the Project and hopefully assist with fundraising efforts.

Thank you for your prompt attention.

With sincere gratitude,

GARY BEERS  
Administrator  
Thresher Memorial Project Group

*Kittery Maine Improvement Foundation is a not-for-profit corporation registered in the State of Maine and a US Internal Revenue Service 501(c) 3 corporation with eligibility to receive tax-deductible contributions(application pending).*

Welcomę to Kittery - Maine's First Port  
Incorporated 1647